

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. H401671 & H402846**

**BETTY MUELLER, EMPLOYEE**

**CLAIMANT**

**VS.**

**FLIPPIN SCHOOL DISTRICT, EMPLOYER**

**RESPONDENT**

**ARKANSAS SCHOOL BOARDS ASSOCIATION,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED APRIL 1, 2026**

Hearing before Administrative Law Judge, Gregory K. Stewart on the 19<sup>TH</sup> day of February 2026, in Harrison, Arkansas. Opinion issued by Administrative Law Judge James D. Kennedy who was reassigned to this matter.

Claimant is represented by Frederick Rick Spencer, Attorney at Law, Mountain Home, Arkansas.

Respondents are represented by James A. Arnold, Attorney at Law, Ft. Smith, Arkansas.

**STATEMENT OF THE CASE**

The hearing was originally heard by Administrative Law Judge Gregory K. Stewart, but the decision and opinion were reassigned to Administrative Law Judge James D. Kennedy, after the well-earned retirement of Judge Stewart. The hearing was conducted on the 19<sup>th</sup> day of February 2026, to determine the issue of temporary total disability (TTD) from July 23, 2025, through February 11, 2026, along with the issues of penalty, interest, and attorney fees. All additional issues were reserved. The parties stipulated and agreed that the Claimant suffered a compensable injury to her right shoulder on December 14, 2023, and April 2, 2024, and earned a sufficient wage entitling her to a weekly compensation rate of \$372.00 for TTD benefits.

The claimant contends that she was released to return to work by Dr. Kirk Reynolds on August 25, 2025, with light duty restrictions, and the respondent employer was able to provide light duty to the claimant if she was still an employee. Since she was not an employee, the respondents denied additional TTD benefits since they would have been able to provide light duty. The claimant contends she is entitled to TTD since she had not reached MMI, is still under the care of Dr. Kirk Reynolds, and is not employed and entitled to this benefit. Additionally, the claimant contends that since the Respondent is denying TTD benefits, she is entitled to penalties, interest, and attorney fees.

The respondents contend “without waiving other defenses” that the claimant is not entitled to TTD after the date she was released to return to work with restrictions.

A copy of the Pre-hearing order was marked “Commission Exhibit 1” and made part of the record without objection. Two witnesses testified, Diane Mueller, the claimant, and Kelvin Hudson, for the respondent. From a review of the record as a whole, to include medical reports and other matters properly before the Commission, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. 11-9-704.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers’ Compensation Commission has jurisdiction over this claim.
2. That an employer/employee relationship existed on December 14, 2023, and on April 2, 2024, when the Claimant sustained compensable injuries to her right shoulder.

3. That the Claimant earned sufficient wages to entitle her to compensation at the weekly rate of \$372.00 for TTD.
4. That the claimant has failed to satisfy the required burden of proof to prove by a preponderance of the evidence that she is entitled to TTD from July 23, 2025, through February 11, 2026.
5. That, consequently, all other remaining issues are moot.
6. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

### **REVIEW OF TESTIMONY AND EVIDENCE**

The Pre-hearing Order was admitted into the record without objection. The claimant submitted two exhibits with the first exhibit of medical records consisted of return-to-work slips. The claimant's second exhibit consisted of non-medical records consisting of a check register report. Both exhibits were admitted into the record without objection. The respondents also submitted two exhibits with the first exhibit consisting of twenty pages of medical records. The respondents' second exhibit consisted of non-medical records which consisted of a retirement letter. Both exhibits were also admitted without objection. The parties also submitted a joint exhibit which consisted of the deposition of the claimant.

The Claimant, Betty Diane Mueller, testified that she was fifty-nine at the time of the hearing. She had obtained her tenth-grade education, had never obtained her GED, and worked in the kitchen for the Flippin School District, where they fed up to 500 "kids" during three different periods. The Claimant further testified that they were understaffed

at the time of her initial injury and the injury occurred while she was picking up cartons of milk weighing more than 50 pounds when she injured her right shoulder. She testified that she is right hand dominant. When asked if she was able to currently use her right hand, she responded “Not like I used to; no sir.” “I can’t reach – like high up the cabinets and get stuff. It kind of catches, and I will have to get it back down, you know still.” She went on and stated she was injured in December of 2023. (Tr. 6 - 11) She was injured while lifting the milk for the preschool and the elementary students to send to their classrooms. She felt something at the time and told her supervisor or the person that was over her that she had done something to her arm.

She went on to testify that after returning from the Christmas holidays, they were still short staffed, and she would then pick up the milk with her left arm, with the help of a co-worker. Her symptoms became worse. She testified her pain was bad during the day but worse during the night on days she was working. She took medications, either prescription or non-prescription, which caused her to be sleepy and drowsy. (Tr. 12, 14) After returning in January from the holidays, she stated that the respondent moved a lady to move the milk, but she was then told that she would be required to substitute for the lady that was now doing her job with the milk. She questioned her supervisor on how she was going to open cans of fruit with her left hand, dump them over into pans, and then pick up the six-inch and a half pans. She went on to testify that she could not do the new job without using her right arm to get it from the table to the little cart and over to the cooler and place it inside the cooler. The claimant went on to say that she told her first and second doctor about her problems. She admitted that the respondent sent her for another shoulder surgery after her second injury. In regard to her second injury, she was

standing at the computer desk where she would scan the children's nutrition cards and was asked to get some paper products when her foot caught on something and she fell on the milk box on her right side, and she instinctively used her right arm to reach out and noticed another injury. She had to wait for a year and a half for the first surgery with Dr. Rauls. (Tr. 15 – 17) She went on to state that the first surgery was denied and she then talked to another supervisor. She eventually went to MedExpress due to her pain being an eight to a ten. She was still trying to work and to keep up with the lines by using her left hand to pick up the "little scanner" if the students had their card, and if they didn't, she would have to put their names on the screen to show that they went through the line. Using the screen was a slow process and the meal lines would back up and kids would walk out. Students only had 20 to 25 minutes to eat. (Tr. 18 - 20) She went on to testify that prior to her first injury, there were no backing up of the lines and after the first surgery, there was a long backup of the lines. She felt that the backup was due to her having to use her left hand, which caused frustration with the "school supervision" and the "school people." She was told to keep the lines going because they were there to feed the kids. (Tr. 21)

After her second injury, which reinjured her right shoulder per her testimony, she was told not to go back to Dr. Rauls because she needed a second opinion and was sent to Dr. Kirk Reynolds who performed the second surgery. The second surgery was performed quicker than the first, and she was then given a return to work slip that provided that she should be in a sling at all times. That is when she knew she couldn't go back to work. "I couldn't keep up with, you know, trying to get it done." She felt that the restrictions were not followed, and she could not do the job without her right arm. In regard to her

resignation, she stated “The reason I, you know, resigned is because after workmen’s comp denied me and I called my manager and told her and that kind of, you know, put me in a state like, ‘Oh, my gosh, what am I going to do now?’” (Tr. 22 – 24)

She went on to testify that the respondent employer sent out the contracts for the next year and she returned to MedExpress who set her up for therapy, but it was never approved by worker’s compensation. She attempted to use her personal insurance through the school, which was also denied, and she then went to her primary doctor, Dr. Lance Lincoln, who had originally made the referral to Dr. Rauls. (Tr. 24)

In an attempt to clarify the testimony, the claimant testified that after the second injury, she received a contract in the mail in March or May for the following school year and was given a return to work by her treating doctor. (Tr. 25) She didn’t attempt to go back to work after Dr. Stallings provided a return to work slip that stated she could return to work while wearing a sling because she felt that “I Couldn’t do my job” and that was why she resigned. She was then specifically asked if she was given a full release on February 11<sup>th</sup>, 2026, that provided “If the employer is unable to accommodate these restrictions, then it is the responsibility of the employer to keep the patient off work” and she responded “Uh-huh.” (Tr. 26) She had talked to her doctor and her nurse practitioner about her frustrations with her work accommodations. (Tr. 27)

At this point the Court interjected and attempted to clarify the testimony and asked if the Claimant was only asking for benefits up through the date of February 11, 2025, and the response from the Claimant’s attorney was yes, but that we would ask for benefits later if she was still being treated. Claimant then went on to testify that she was

experiencing pain in her right shoulder that was maybe a three or four, “but it’s not like every day, you know. Some days are good, some days are bad.” (Tr. 29, 30)

Claimant stated that she could still not sleep on her side because she would wake up and just holler out at night. After her surgery, her husband would have to wash her hair and put her shirt on. She was then asked about the use of her left shoulder and if it resulted in pain due to over-use and she responded that she had a limit on the left shoulder and would receive trigger points and her husband would massage her shoulder. She was then specifically asked if she was talking about the left arm as “This Arm” and she responded “Right. Ten times with the left and twenty with the right”. (Tr. 31)

Under cross examination, the Claimant admitted that she had a work-related injury to her left shoulder while working in Mississippi and that she had surgery for it. As the result of the Mississippi injury, she had a lifting restriction of 20 pounds for her left arm. (Tr. 33) She also admitted that when she went to work for the Flippin School District, she informed the people that she had a 20-pound lifting limit for her left arm. She was then asked if the Respondent employer was already providing an accommodating restriction due to her prior injury and she responded “What – they unloaded the trucks, I mean, put the stuff up for everybody.” “It wasn’t just what, you know, I had to do.” (Tr. 34) She also admitted working at the school kitchen until the injury in December of 2023, that she was lifting the milk, juice, and fruit, and getting it ready for in-classroom breakfast and doing the computer, and she injured herself while lifting the crates the first time. She was specifically asked after returning to work after the Christmas break, and reporting her problem, if she didn’t have to go back to lifting the trays anymore, and she responded, “Some days I would have to, but I would have someone with me, you know, helping me.”

(Tr. 35) She admitted that they were already accommodating her restrictions to her right arm. She also admitted that she did not have to do the heavier parts of her job and had someone help her but stated she then had to do their job. In regard to her computer work, she stated she already was doing it. She also agreed that in her deposition, approximately a year and a half to two years earlier, that she had admitted the school had worked with her to make her job easier. She admitted she continued to work and was not using her arm at work. She also admitted that she had picked up a skillet of cornbread with her right hand while cooking at home, and realized “Well, that’s why I shouldn’t be using my right arm.” (Tr. 36) The claimant also admitted that she had reported that she had irritated her arm while lifting a skillet of cornbread at home. She also admitted that no one told her that she had to use her right arm, but stated she would have to use it a little bit. She also admitted that she suffered her second injury while working at the computer and that she was slower because she was unable to use her right arm, and the respondent was aware of this. She did add however that they were receiving calls from the teachers stating that the line was not moving fast enough. She also admitted that no one from the respondent instructed her to use her right arm but added “You know, but I just had to do, you know, what I could do to accomplish what we needed to get done.” Claimant was also asked if she had already resigned when her arm was placed in the sling, and she responded “I am not sure when I seen – I think her name was Dr. Peterson (sic). She was the nurse practitioner at my primary doctor. I can’t remember when I saw her, and she put me in the sling.” The Claimant did agree that she resigned in May of 24, at the end of the school year. She also admitted that she was still working at the school

when she resigned, and that the Respondent employer was honoring her restriction for not using her right arm. (Tr. 37 – 39)

In regard to the second surgery when she was released from being completely off work for the surgery to being released to one-arm duty, the claimant agreed that everything was eventually taken care of by workers' compensation. (Tr. 40) She also agreed that even after she was released to return to work with the restrictions, her medical treatment continued to be taken care of by workers' comp as far as she knew. She also agreed that she had been released by Katherine Stallings, Dr. Reynolds Physician Assistant. The Claimant was then asked the following question:

Q: I am a little – the document says you are “released to full duty.” No restrictions effective February 11, 2026.” So what restrictions is she talking about it's the employer's responsibility to keep the patient off work when you don't have any restrictions at all? Do you know what she's even talking about?

A: I have no idea.

Claimant went on to state that she was still doing therapy and still weak in the arm. (Tr. 41) At this point, the Respondents stated that they had no further questions and the Claimant passed the witness.

The respondents then called Kevin Hudson, who testified that he was the Superintendent of the Flippin School District and had been in that position for ten years and was in his 33<sup>rd</sup> year in education. Mr. Hudson explained that the policy of the respondent employer for providing work for workers' compensation employees was that if someone needed accommodations “yes, we accommodate.” “As a matter of fact, we are accommodating someone right now in the same way” and that person works in the kitchen and can only use one arm.” (Tr. 43, 44)

Under cross examination, Mr. Hudson admitted that he had been in the courtroom the entire time, and that everything the claimant had said was true and correct to the best of his knowledge and belief. (Tr. 45)

At this point the hearing was concluded.

The Claimant's medical exhibits provided a return-to-work slip dated July 23, 2025, from OrthoArkansas and Katherine Stallings, PA, PASUP. The slip provided that Claimant could return to work/school on July 23, 2025, with restrictions and no use of her right extremity, which must be in a sling at all times. (Cl. Ex. 1, P.1) A second return to work slip dated August 25, 2025, from OrthoArkansas and signed by Dr. Reynolds, provided that the Claimant could return to work on August 25, 2025, with the following restrictions: no lifting, pushing, pulling, and with no work above shoulder level. (Cl. Ex. 1, P. 2) A third work slip dated October 27, 2025, and again signed by Dr. Reynolds, provided that the claimant could return to work on October 27, 2025, again with no lifting, pushing, pulling and no work above shoulder level. (Cl. Ex. 1, P. 3) A third return to work slip dated December 8, 2025, and again signed by Dr. Reynolds, provided the claimant could return to work on December 8, 2025, with a 15-pound lifting limit. (Cl. Ex. 1, P. 4) The fourth return to work slip dated February 11, 2026, and signed by Katherine Stallings, PA, PASUP, provided the claimant could return to work full duty with no restrictions, but then added that if the employer is unable to accommodate these restrictions, then it is the responsibility of the employer to keep the patient off of work. (Cl. Ex. 1, P. 5)

Claimant's Non-Medical Exhibit consisted of the Temporary Total Disability payments to the Claimant from the date of October 16, 2024, through the date of July 21, 2025, for the total payment of \$16,716.00. (Cl. Ex. 2, P. 1, 2)

The Respondent's Medical Exhibit consisted of 20 pages. The report from OrthoArkansas dated July 10, 2025, provided that the Claimant was diagnosed with a right rotator cuff tear with right shoulder postoperative arthrofibrosis and right shoulder synovitis and a right shoulder arthroscopy that had been performed. (Resp. Ex. 1, P. 1 – 3) A follow up report from OrthoArkansas dated July 23, 2025, provided it was the first postoperative visit following her right shoulder arthroscopy with a rotator cuff repair. Regarding her work, the report provided the claimant would remain on modified duty, with her right upper extremity remaining in a sling at all times. (Resp. Ex. 1, P. 4 – 7)

Claimant again returned to OrthoArkansas on August 25, 2025, for a follow up evaluation. This report provided that she complained of aching, shooting, and throbbing pain that rated a four out of a ten. She could stop using her sling, continue her physical therapy, and could return to work with modified duty with no lifting, pushing, or pulling of the right extremity and with no work above the shoulder level. (Resp.1, P. 8 -11)

The Claimant's next visit to OrthoArkansas per the record was on October 27, 2025. The report provided the Claimant was 3.5 months status post right shoulder arthroscopy. She would continue physical therapy and could return to work on modified duty with a five-pound pushing and lifting limit with her right upper extremity and with no work above the right shoulder level. She had not reached MMI. (Resp. 1, P. 12 – 15)

The Claimant again returned to OrthoArkansas on December 8, 2025. This report provided that the Claimant was originally seen for a second opinion. Her original injury occurred in April of 2024, with an orthoscopic surgery involving a distal clavicle excision, a subacromial decompression, and a labral debridement. Unfortunately, she had persistent pain and weakness, and an MRI scan demonstrated a full-thickness rotator cuff

tear and on July 10, 2025, a right shoulder arthroscopy was performed to repair the rotator cuff repair. She was allowed to return to work with a five-pound lifting, pushing, and pulling restriction. (Resp. Ex. 1, P. 16 – 19) The final report from OrthoArkansas dated December 8, 2025, provided that the Claimant could return to work on December 8, 2025, with a 15-pound lifting limit. (Resp. Ex. 1, P. 20)

Respondents Non-Medical exhibit consisted of Claimant's retirement letter addressed to whom it may concern and stating that the Claimant was resigning from the Flippin School District at the end of the 2023 – 2024 school year. (Resp. Ex. 2, P. 1)

The final Joint Exhibit consisted of the deposition of the Claimant taken on June 12<sup>th</sup>, 2024. The Claimant admitted she had suffered a left shoulder injury that resulted in a workers' compensation claim and left shoulder surgery in approximately 2014 and again in 2015 on the same shoulder. She also admitted that she had a weight limit of 20 pounds regarding her left shoulder. In regard to her current respondent employer, she testified she suffered an injury in December of 2023, and again in early April of 2024, which involved her right shoulder. She started having right shoulder trouble in the 23 – 24 school year due to having to load a hundred and eight-eight juices, milks, and cups of fruit every morning. She lifted items over 20 pounds and would lift it more with her right arm. She was picking up a crate of milk when she first noticed a problem with her right shoulder which popped, burned, and happened all at once. She initially did not go to the doctor, and returned to work following the Christmas break, but testified she was not lifting. In March, while at home, she reached to pick up a "little-bitty skillet" and her shoulder started hurting. The claimant went on to testify that she had been hurting since December and felt something was wrong and it was gradually getting worse.

From December 14<sup>th</sup> to March, “There was no lifting. I was on the nutrition computer, you know, scanning the kids in, and that’s about all I did, you know.” She testified that she did not ask the respondent to send her to a doctor. She went to MedExpress on her own. She talked to her supervisor by text on February 18<sup>th</sup>, in regard to her right shoulder problems, but the text was overlooked. She told MedExpress she injured her right shoulder while at work and was referred to therapy three times a week. She was then told by the school to contact workers’ compensation and never received the therapy.

After MedExpress, she saw Kim Peters, the nurse practitioner working with her primary care doctor, Dr. Lincoln. She admitted continuing to work after going to MedExpress. Kim Peterson placed her in a sling and told her no lifting heavier than a coffee cup. “And from there, you know, I just, you know, did the computer and all, because Martha told me no lifting, nothing.”

In April, her foot caught the nutrition computer at work which caused her to fall over the milk box where she used her right arm to catch herself in the fall, which made her problem worse. She woke on a Thursday morning after the event on a Tuesday with her arm swollen and she still went to work. When she walked into work, she was told she did not look good, and she then told them about her shoulder. She was then sent to the emergency room where she received an x-ray. She did not receive a referral to an orthopedic doctor at that time. She testified that Dr. Kim ordered an MRI back in March and it was denied by her insurance company. Dr. Lincoln then referred her to Dr. Rauls at Twin Lakes Ortho who recommended that she have surgery. (Joint Exhibit)

## **DISCUSSION AND ADJUDICATION OF ISSUES**

In determining whether the claimant has sustained her burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. A.C.A. 11-9-704. Wade v. Mr. Cavananugh's, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

In the present matter, the parties stipulated that the claimant suffered a compensable injury to her right shoulder on December 14, 2023, and again on April 2, 2024. Although the testimony was somewhat confusing at times, after a review of the testimony of the witnesses and the evidence entered into the record without objection, including the deposition of the claimant, it is found that the evidence provided that the claimant had previously injured her left shoulder in a work-related accident with a different employer in a different state a few years prior, and had been restricted to lift only 20 pounds with her left arm. The claimant testified that due to this restriction, which is found to be believable, she had a tendency to favor her left arm and predominantly use her right arm, which also happened to be her predominant hand and arm. These actions would be typical for a right-hand dominant person, prior to her suffering a right shoulder work-related compensable injury with the Flippin School District. After the occurrence of her compensable right shoulder injuries while working for the respondent, the claimant testified in her deposition that from the dates of December 14<sup>th</sup> to March, “There was no lifting. I was on the nutrition computer, you know, scanning the kids in, and that’s about all I did, you know.” The claimant also testified that after the Christmas holidays she was

no longer required to move the milk, juice, and fruit, which appeared to be the cause of her right shoulder injury. Another employee replaced her in performing that activity. However, claimant stated that she was then required to perform the work of the individual that replaced her, and she felt she was slower than the previous employee at that job, which caused the meal line to move slower resulting in complaints from the teachers. This caused her to feel that she was creating issues. However there appeared to be no complaints or instructions directed at the claimant to speed up her work from her supervisors. The Superintendent of the schools testified that it was the policy of the school to accommodate workers, and that the school was accommodating a worker with similar issues who was unable to use one arm and was currently working in the cafeteria. Before the end of the 2023-2024 school year, and before renewing her contract, the claimant provided an undated letter addressed to “Whom it may concern” that she was resigning at the end of the 2023-2024 school year. The first return to work slip entered into the record by the claimant and dated July 23, 2025, and the first medical report entered into the record by the respondents dated July 10, 2025, were both dated well after the date of claimant’s resignation from her employment.

A claimant’s testimony is never considered uncontroverted. *Nix. V. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). The determination of a witness’s credibility and how much weight to accord the person’s testimony is solely up to the Commission. *White v. Gregg Agricultural Ent.* 72 Ark. App. 309, 37 S.W. 3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts and is not required to believe the testimony of any witness.

The compensable injury to the claimant's left shoulder is an unscheduled injury. An employee who suffers a compensable unscheduled injury is entitled to temporary total disability compensation for that period within the healing period which she suffered a total incapacity to earn wages. Ark. State Hwy & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W. 2d 392 (1981). Claimant's failure to return to work must be causally related to the injury. Foster v. Tyson Poultry, 213 Ark. App. 172, 426 S.W. 3d 563 (2006). "Disability" means incapacity because of injury to earn, in the same or any other employment, the wages which the employee was receiving at the time of the injuries. The Commission may consider the claimant's physical capabilities and evaluate her ability to engage in gainful employment. The claimant bears the burden of proving both that she remains within her healing period and, in addition, suffers a total incapacity to earn pre-injury wages in the same or other employment. Paalazolo v. Nelms, 46 Ark. App. 130, 877 S.W.2d 938 (1994)

TTD benefits compensate a worker who cannot work during their period of recovery. Here it is found that the claimant voluntarily resigned from her job and position at the end of the 2024 school year while being accommodated in her work environment for her injuries. Due to these accommodations and the claimant's work ethic, she was clearly engaged in gainful employment at the time of her resignation earning pre-injury wages. Although it is not doubted that teachers may have been complaining about slow-moving lines, there was no testimony that administrators were making any specific complaints or demands. There appeared to be a shortage of workers in the area. Additionally, it is found believable that the respondent employer is currently accommodating an employee with a similar injury working a similar job. All off work slips

and medical records made part of the record were dated well after the claimant resigned. Here, the claimant was provided employment to earn the same wages that she was earning prior to her work-related injury, when she voluntarily quit her job. TTD benefits compensate a worker with an unscheduled injury when they cannot work at all during their recovery, and here it is clear that with the accommodations provided by the respondent, claimant was able to work at the time of her resignation and it is found that the claimant has failed to satisfy the burden of proof that she is entitled to TTD.

After reviewing the evidence impartially, and without giving the benefit of the doubt to either party, it is found that the claimant has failed to satisfy the required burden of proof to prove by a preponderance of the evidence that she is entitled to TTD benefits. That, consequently, all other issues are moot. If not already paid, the respondents are ordered to pay for the cost of the transcript forthwith.

IT IS SO ORDERED.

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JAMES D. KENNEDY  
Administrative Law Judge